IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5556 OF 2005

Dharma Budhaji Dhotre. ...Petitioner.
Vs.
The Police Commissioner, Thane & Ors. ... Respondents.

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Mr. V. N. Mali for the Petitioner.

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CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.

January 10, 2006.

P.C. (Per Dr. Chandrachud, J.) :

The Petitioner was employed as an Assistant Sub Inspector of Police. A criminal case was registered against the Petitioner in 1991 on the charge that while he had been entrusted with the duty of transporting two accused persons from the Court at Roha to Thane Jail, the Petitioner allowed one of the accused to meet his sister at Dombivli Kopar Road, from where the accused escaped from custody. A criminal case was registered against the Petitioner for offence under Sections 224, 225A and 114 of the

Penal Code. A departmental enquiry was also initiated against the Petitioner for misconduct. In the departmental enquiry five charges were levelled against the Petitioner and during the course of the enquiry, the misconduct was held to be established. The Petitioner came to be dismissed from service on 7th October 1992. No appeal was filed against that order, and the order of dismissal became final.

2. The Petitioner was acquitted by the Judicial Magistrate, First Class, Kalyan, on 29th December 1999 in the Criminal proceedings. Thereupon, the Petitioner made an application on 12th March 2000 for reinstatement. The application was rejected by the Additional Commissioner of Police, Thane. The Petitioner thereupon moved the Maharashtra Administrative Tribunal. The Tribunal held that the acquittal of the Petitioner in a criminal case was mainly on the ground that witnesses had turned hostile or that material witnesses were not examined. The Tribunal, therefore, held that strictly speaking, the order of the Judicial Magistrate, First Class, was not an acquittal on merits. On the other hand, in so far as the departmental proceedings were concerned, the Tribunal made the following observation :

> "As far as the departmental proceedings are concerned chargesheet shows that 5 charges were levelled against the applicant. One was in respect of the criminal case No.36/91 registered against the applicant under Section 224, 225-A and 114 of I. P. C. Similarly the second charge was also in that respect. But the other 3 charges i.e. Nos.3, 4 & 5 were different and they relate to different misconduct committed by the appellant while on duty i.e. Charge No.3 is that written warrants from Thane Main Office were taken for taking the accused from Central Cell, Thane to Mumbra and Panvel to Roha and for return from Roha to Thane, but they were not used. Charge No.4 was that Smt.Nisha Ansari and Shri Ravi were allowed to travel along with the accused and all of them got down at Dombivali because of the accused Navnat Patil. They went to the place of their friend and took meals along with liquor. The accused Rajan Shrinivas Chetan was allowed to take food after removing his handcuff. Charge No.5 is that knowingly accused Rajan was given permission to run away. Thus, at least 3 charges in the D.E. clear differ. They also speak about the misconduct committed by the applicant. They have been held proved." (emphasis supplied).

The Tribunal was, however, of the view that the effect of the order of acquittal will have to be taken into consideration while deciding the quantum of punishment. Accordingly, the matter was remanded back to the disciplinary authority for reconsidering whether the punishment of dismissal is warranted in view of the decision in the criminal case. It was, however, made clear that the disciplinary authority would be entitled to either maintain the punishment or reduce it.

3. The disciplinary authority upon remand initially took the view that there was no specific direction of the Tribunal on the question of punishment and consequently maintained the order of dismissal. That warranted a fresh order of remand by the Tribunal. Upon remand, the disciplinary authority by its order dated 31st January 2004 noted that there were five charges in the disciplinary proceedings; namely, (i) Allowing an accused who was in lawful custody to escape; (ii) Allowing the accused to be transported by a private vehicle without using an S.T. warrant; (iii) Permitting persons who were known to accused to travel with him; (iv) Proceeding to the residence of an acquaintance of the accused for the consumption of food and alcohol; and (v) Removing the handcuffs of the accused which facilitated his escape from custody. The disciplinary authority held that since these charges had been clearly established in the disciplinary proceedings, the order of punishment was appropriate. The order of the disciplinary authority was challenged before the Maharashtra Administrative Tribunal. By its impugned order dated 23rd March 2005, the Tribunal has dismissed the Original Application and has confirmed the view of the disciplinary authority.

4. While dismissing the application filed by the Petitioner, the Tribunal has noted that the prosecution under the Penal Code was for offences under Sections 224, 225-A and 114 of the Penal Code. On the other hand, the charges in the domestic enquiry covered a broader field and having regard to the allegations levelled against the Petitioner in the departmental enquiry, no other view than that which had been taken by the disciplinary authority was possible.

5. On behalf of the Petitioner, it has been submitted that the Petitioner was entitled to reinstatement in service upon the order of acquittal that was passed in the criminal proceedings. There is no merit in the submission. At the outset, it must be noted that the Petitioner came to be dismissed from service on 7th October 1992, after the charge of misconduct was found to be established in the course of disciplinary proceedings. This order attained finality and was not challenged. It was only after the order of acquittal in the criminal proceedings that the Petitioner chose to move the Tribunal. The Tribunal by its order dated 14th November 2002 noted that whereas the first two charges in the disciplinary

proceedings related to the criminal proceedings, charges 3, 4 and 5 were different. These have already been adverted to in the earlier part of this judgment. The Tribunal nonetheless directed that the quantum of punishment should be reconsidered having regard to the order of the acquittal and that it was for the disciplinary authority to decide as to whether punishment should be maintained or reduced. We are in agreement with the finding arrived at in the impugned order by the Tribunal dated 23rd March 2005 that the disciplinary authority upon remand has furnished adequate reasons for maintaining the order of dismissal. The charges against the Petitioner were of a serious nature and were duly established in the disciplinary proceedings. We have perused the order of acquittal passed by the Judicial Magistrate, First Class, and it is apparent therefrom that the principal ground on which the Petitioner came to be acquitted was that two of the witnesses had turned hostile. The only other evidence was, the evidence of the Police Station Officer before whom the Petitioner had lodged a report that the accused had escaped while in his custody. In these circumstances, the Tribunal in the course of its first order correctly came to the conclusion that strictly speaking, this was not an acquittal on merits. The decision of the Supreme Court in

Sulekh Chand & Salek Chand v. Commissioner of Police, JT 1995(1) S.C. 23, that has been relied upon by the Petitioner is of no assistance to the Petitioner. That was a case where a claim for promotion from the post of S.I. was rejected on the ground of the pendency of a prosecution under the Prevention of Corruption Act. The proposed departmental enquiry also related to the same offence under Section 5(2) of the Prevention of Corruption Act. The appellant was acquitted of the charge under Section 5(2) and the Supreme Court noted that the acquittal was on merits and had become final. Similarly, the departmental enquiry had also been dropped. In these circumstances, the foundation on which the DPC proceeded was found to be illegal. These were the distinguishing circumstances. In the present case, the acquittal in the criminal case will not operate to displace the finding of misconduct which has been arrived at in the disciplinary proceedings. For all these reasons, we do not find any merit in the petition. The Petition is accordingly dismissed.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)